

EXHIBIT 14

(Redacted)

(Previously Filed Under Seal as DI 503-11)

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 UNITED STATES DISTRICT COURT
3 DISTRICT OF MINNESOTA

4 -----x

5 FAIR ISAAC CORPORATION,

6 Plaintiff,

7 v.

Court File No.

16-cv-1054 (WMW/DTS)

8 FEDERAL INSURANCE COMPANY
9 and ACE AMERICAN INSURANCE
10 COMPANY,

11 Defendants.

12 -----x

13 ***CONFIDENTIAL - ATTORNEYS' EYES ONLY***

14 VIDEOTAPED DEPOSITION OF RUSSELL SCHREIBER

15 New York, New York

16 Wednesday, October 24, 2018

17 8:52 a.m.

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21

22

Reported by:

23 LYNN VAN DEN HENDE

CRR, RMR, RPR, CSR-NY, CSR-CA, CSR-IL

24 JOB NO: 39215

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY

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4

October 24, 2018

5

8:52 a.m.

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7

Videotaped deposition of RUSSELL

8

SCHREIBER, held at the offices of Merchant &

9

Gould, 767 Third Avenue, 23rd Floor, New

10

York, New York, pursuant to Notice, before

11

Lynn Van Den Hende, Certified Realtime

12

Reporter, Registered Merit Reporter, State

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of New York Certified Shorthand Reporter,

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State of California Certified Shorthand

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Reporter, State of Illinois Certified

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Shorthand Reporter, Registered Professional

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Reporter, and Notary Public within and for

18

the State of New York.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 A P P E A R A N C E S:

3

4 FOR THE PLAINTIFF:

5 Merchant & Gould

6 3200 IDS Center

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8 Minneapolis, Minnesota 55402-2215

9 612-332-5300

10 BY: ALLEN W. HINDERAKER, ESQ.

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16 Minneapolis, MN 55402-1425

17 612-492-7000

18 BY: LEAH C. JANUS, ESQ.

19 ljanus@fredlaw.com

20

21 ALSO PRESENT:

22 JAMES WOODWARD, Fair Isaac Corporation

23 KEVIN S. MURPHY, Chubb

24 KEVIN MARTH, Videographer

25

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 being negotiated with Chubb?
3 **A. No, no.**
4 **What this says is that we were**
5 **seeking to have a discussion internally about**
6 **pricing a global ELA.**
7 **What I don't see is the next step**
8 **out of this that says, oh, you're approved to**
9 **do it. You're not approved to do it.**
10 **So this is Larry and I guess my**
11 **ask for pricing approval to do something.**
12 **Different than being granted**
13 **pricing approval.**
14 Q. And ultimately FICO did end up
15 providing or deciding to go with a global
16 ELA, correct?
17 **A. Wrong. No.**
18 Q. Okay. And so let's take a look at
19 Amendment Two to the software license
20 agreement, which is Exhibit 110.
21 **A. 110, okay. Amendment Two, okay.**
22 Q. So Amendment Two actually has a
23 license fee of [REDACTED], correct?
24 **A. That's right.**
25 Q. Okay. And unlimited development

Page 108

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 seats, right?
3 **A. That's right.**
4 Q. Okay. While the license was being
5 negotiated, so while prices were going back
6 and forth, Larry Wachs was referring to the
7 fact that he was at [REDACTED] or a global
8 ELA and unlimited license seats, correct?
9 **A. Okay.**
10 Q. So does that change your thinking
11 at all about whether the ELA that was
12 ultimately entered into was in fact a global
13 ELA?
14 **A. It does not.**
15 **I mean, Larry's asking for a**
16 **pricing approval to the people that could**
17 **give it to him, but he never got it. I never**
18 **got it.**
19 Q. And what are you saying that based
20 on? Is that based on a specific
21 conversation?
22 **A. That's based on the deal we did.**
23 **There's no global. There's no --**
24 **there's no product control. There's no**
25 **export stuff.**

Page 109

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 **This doesn't change the territory.**
3 **It's USA, USA, USA. They did the deal.**
4 **So we did a lot of machinations**
5 **because Jim Black asked for global. So Larry**
6 **kept frothing about asking for global.**
7 **It was never approved at that**
8 **price. We never did a global.**
9 Q. Who made the decision not to
10 approve that price specifically for global?
11 **A. So that would have been Mark**
12 **Layden at that time.**
13 Q. Okay. And do you recall hearing
14 from Mark Layden that you could do a deal for
15 the United States, but not for global?
16 **A. I do not.**
17 Q. So are you just assuming that
18 these conversations occurred without specific
19 recollections of them?
20 **A. Which conversations?**
21 Q. The conversations you're talking
22 about that lead you to believe it was a -- it
23 was not a global deal.
24 **A. Right, I have no evidence that we**
25 **actually got approval for a global deal.**

Page 110

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 **I have Larry asking for a global**
3 **deal, but no -- nothing that shows me I got**
4 **approval to do a global deal.**
5 Q. Okay. And so that's what you're
6 basing your conclusion that it was not a
7 global deal on?
8 **A. That's part of it.**
9 **Part of it was I was having -- I**
10 **was the one that Owen called and said, hey,**
11 **can we just make this global.**
12 **And I said I can't afford to do a**
13 **global.**
14 Q. Okay. So you actually told
15 Chubb --
16 **A. I personally told Chubb.**
17 Q. Okay. You told Owen --
18 **A. Williams.**
19 Q. -- Williams at Chubb that he could
20 not get a global deal?
21 **A. For this price.**
22 Q. For what price?
23 **A. For the pricing that was -- you**
24 **know, that they said, oh, they can't -- they**
25 **backed off everything. They didn't have the**

Page 111

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 **projects. They wanted a lower price.**
3 **I said, yeah, for the global I**
4 **need a number. Whatever that number was --**
5 **you know, again, this is 2006 now, so --**
6 **It would have been a very quick**
7 **conversation that we had.**
8 **Owen said can we do this global.**
9 **Not priced for global.**
10 **It could have been Berthiaume,**
11 **Owen and Mark. It may have been Berthiaume,**
12 **Mark Berthiaume. Owen and Mark.**
13 Q. Do you remember when that
14 conversation took place?
15 **A. In -- sometime in December of 2006**
16 **as we were finishing things -- finishing**
17 **things up.**
18 Q. Did you ever put anything like
19 that in an email to anyone at Chubb?
20 **A. I don't think so, not that I**
21 **recall. I wouldn't have needed to.**
22 Q. Why do you say nobody needed to?
23 **A. I say I wouldn't have needed to,**
24 **'cause I had a conversation as the executive**
25 **responsible for the account with the guys**

Page 112

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 **that were binding it, the account guys.**
3 **What's really missing from this**
4 **though is all the -- I forgot, what about all**
5 **the export stuff that would have to be here**
6 **if it was global.**
7 **So that's nowhere in this**
8 **document.**
9 **Just the export controls, you**
10 **know, congratulate to North Korea. There's**
11 **all the documentation that goes with selling**
12 **a license outside of the United States.**
13 **That's not here.**
14 Q. That would be documentation FICO
15 would provide?
16 **A. That would be the contracts, you**
17 **know, required legal -- I forget the terms.**
18 **It's been a while since I've been**
19 **in this business, but it's export control**
20 **documentation, whatever that is.**
21 Q. I'm showing you what has been
22 marked as Exhibit 114.
23 (Exhibit 114, Meeting planner and
24 an agenda, with attachment, from Owen
25 Williams to Chubb people and Mr.

Page 113

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 Schreiber, Bates FED011914_0001 and
3 FED011915_0001 through FED011915_0049,
4 marked for identification.)
5 **A. Owen --**
6 Q. I just have a couple basic
7 questions for you on this one.
8 **A. Okay.**
9 Q. So this is a meeting planner and
10 an agenda and an attachment from Owen
11 Williams to a bunch of Chubb people and you,
12 right?
13 **A. Yes.**
14 Q. And the subject is, "Scoring
15 Engine for Predictive Model/Risk Portfolio
16 Management Workstation Meeting"?
17 **A. Right.**
18 Q. Do you just generally recall what
19 this referred to?
20 **A. No, I really don't.**
21 **Huh. No, I don't. I'd have to --**
22 **I can look through it if you want, but I**
23 **don't.**
24 Q. There's a Fair Isaac PowerPoint
25 deck --

Page 114

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 **A. Yeah, do you want me to look at**
3 **it?**
4 Q. Just take -- you don't have to
5 read it in detail, just -- I have a couple
6 general questions for you about it.
7 But if you take a quick look at it
8 and let me know.
9 MR. HINDERAKER: Look at it as
10 much as you need to to be comfortable.
11 (Document review.)
12 **A. Okay.**
13 Q. So is this a PowerPoint
14 presentation that Fair Isaac prepared?
15 MR. HINDERAKER: Objection, lack
16 of foundation.
17 **A. I don't know.**
18 Q. Okay. You didn't prepare it?
19 **A. I did not prepare this.**
20 Q. Or if you did, you don't recall
21 it?
22 **A. I did not -- I didn't. I'm pretty**
23 **sure I did not prepare this.**
24 Q. And my question is -- I mean, it
25 appears to be a Fair Isaac presentation in

Page 115

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 **There should have been an email**
3 **that had gone out said, here's the**
4 **conclusions.**
5 **If there was a question.**
6 **Again, that assumes a meeting took**
7 **place. I don't know if this meeting took**
8 **place, right?**
9 **This is just an invite.**
10 Q. Right.
11 A. Right. So it may not have
12 happened.
13 Q. Do you have any reason to think it
14 didn't happen?
15 A. No. But I have no reason to think
16 it did.
17 You know how many meetings I have
18 that never took place on my calendar?
19 I have no reason to believe that
20 meeting happened.
21 It probably did. But I haven't
22 seen any conclusion that said it did.
23 Q. It probably did though, right?
24 A. You know, I was trying to be
25 polite. Who knows?

Page 188

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 Q. Okay.
3 A. I was really trying to be kind.
4 Q. Well, we also looked at the email
5 that Larry Wachs sent 12 days after the
6 meeting on November 14, 2008 that is also
7 talking about whether or not the ELA --
8 A. This is 116?
9 Q. -- is global?
10 Yeah.
11 A. Yeah, so Larry was convinced.
12 The problem is the agreement
13 doesn't say it. There's nothing in any
14 agreements that say it's global.
15 So Larry has convinced himself.
16 Q. And so there was internal
17 disagreement about the scope of the Chubb
18 ELA, is that fair?
19 A. No -- well, yeah, sure, if you
20 want to say Larry was convinced, right?
21 But there was -- Larry was the
22 lowest man on the totem pole in every
23 document you're looking at -- well, that's
24 not true. Sally Holt and Dale Zwizinski were
25 lower than Larry.

Page 189

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 Q. Well, you were saying you were
3 partners with Larry in the pursuit of Chubb?
4 A. That's right.
5 Q. And Larry was the lead on most of
6 the negotiations, right?
7 A. No.
8 Q. Who was the lead?
9 A. So Larry -- Larry was facing off
10 with procurement. And I faced off with the
11 buyers.
12 The buyers were the CIOs in the
13 division at that time.
14 Q. Who was that?
15 A. That was Owen and then Mark
16 Berthiaume.
17 Q. Okay. And Larry was facing off
18 with who?
19 A. Jim Black, who's an
20 administrative --
21 Q. Okay. Does the fact that Larry
22 followed up with you 12 days after these
23 November 14 meeting planners indicate to you
24 that in all likelihood that meeting did take
25 place?

Page 190

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 A. No.
3 Q. Does it reinforce for you that in
4 November of 2008 you as an internal team were
5 actively debating whether Chubb's use of
6 Blaze in Europe would be allowed under the
7 ELA?
8 A. Just say it again, please.
9 I was reading at the same time you
10 were speaking.
11 Q. Does it reinforce for you that in
12 November of 2008 FICO as an internal team was
13 debating -- actively debating whether Chubb's
14 use of Blaze in Europe was allowed under the
15 ELA?
16 A. What does "actively" mean to you?
17 You can shrug and I get to shrug?
18 I just don't know.
19 Plus it came up. It was active --
20 actively -- it was active -- I'm thinking,
21 oh, we've got a team, we're on a conference
22 table, we're working an issue.
23 But this was not that.
24 Q. Okay.
25 A. We never really huddled around and

Page 191

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 **said, you know, we got to solve this.**
3 **We may -- if someone sent an**
4 **email, like, oh, I got some emails from back**
5 **in the day.**
6 **So "actively" means we got a**
7 **project team, we're solving a problem.**
8 **That's not active to me.**
9 **This was someone asked a question.**
10 **So Larry threw an answer out. We had a**
11 **meeting scheduled. Did it take place?**
12 **Maybe, maybe not.**
13 Q. Okay. Do you know what answer was
14 ultimately given to Chubb Europe?
15 MR. HINDERAKER: Objection.
16 The question assumes facts not in
17 evidence.
18 Q. Go ahead.
19 **A. No, I do not know if someone told**
20 **Chubb Europe something.**
21 Q. But we know that at least Richard
22 Hill's recollection as of August 14 of 2012
23 was that he seemed to remember their U.S.
24 Blaze license allowed them the software for
25 free, right?

Page 192

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 MR. HINDERAKER: Objection,
3 misstates the document.
4 **A. No, that -- no, that's wrong.**
5 **Richard says I think they have**
6 **software for free.**
7 **Richard Hill in this document says**
8 **I seem to remember the U.S. Blaze license**
9 **allowed them to the software for free.**
10 **He does quote a U.S. Blaze license**
11 **though. He calls it a U.S. Blaze license.**
12 Q. But he's asking about whether he
13 in Europe can sell Blaze to Chubb Europe?
14 **A. Yeah.**
15 Q. And his conclusion is, I recall
16 that the U.S. Blaze license allowed them the
17 software for free, right?
18 **A. Right.**
19 **But his conclusion doesn't say,**
20 **oh, I reviewed the contract, oh -- you know,**
21 **he didn't -- it's just kind of -- Richard**
22 **is -- I'm not going to characterize people.**
23 **Richard did not read the**
24 **agreements. I'll say that.**
25 Q. You met with Chubb Europe in

Page 193

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 December of 2012?
3 **A. Well, I met with some people in**
4 **Chubb in Europe, in the U.K., yeah, in the**
5 **U.K. office.**
6 **I don't remember who they were.**
7 **Do you have a calendar on that?**
8 **I did meet with people in the U.K.**
9 **though.**
10 Q. And what did you talk about?
11 **A. Decision simulators I recall**
12 **predominantly.**
13 **I don't recall if we discussed**
14 **Blaze. I just don't recall. We may have.**
15 Q. You were meeting with Chubb Europe
16 as a current client though, correct?
17 **A. As Chubb is a current client.**
18 **Chubb was -- I'm not saying Chubb**
19 **Europe was a current client.**
20 Q. Right. But you understood that
21 Chubb Europe was using Blaze at the time of
22 your meeting with them?
23 **A. I don't know. I don't -- you'd**
24 **have to show me --**
25 Q. You don't recall?

Page 194

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 **A. Yeah.**
3 Q. It's possible that you knew that
4 Chubb Europe was using Blaze at the time of
5 your meeting?
6 **A. I would have taken them head on.**
7 **If I knew they were using Blaze**
8 **when I met them, chances are really good I**
9 **would have said, we have a problem.**
10 **If it was in my face like that,**
11 **chances are I would have said, we have a**
12 **problem. Chances are really good I would**
13 **have said, we have a problem.**
14 Q. I'm showing you what's been marked
15 as Exhibit 118.
16 (Exhibit 118, Email chain, Bates
17 FED004808_0001 through FED004808_0007,
18 marked for identification.)
19 (Document review.)
20 Q. This is an email exchange between
21 you and Setti.
22 Do you remember him?
23 **A. I think it's a he -- a she, but --**
24 **actually it's kind of fun.**
25 **I didn't until I saw this. So it**

Page 195

<p>1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber</p> <p>2 by FICO.</p> <p>3 A. Okay.</p> <p>4 Q. And --</p> <p>5 A. This is a Chubb document though.</p> <p>6 MR. HINDERAKER: Yeah, it is, yes.</p> <p>7 THE WITNESS: Okay.</p> <p>8 MR. HINDERAKER: Of course.</p> <p>9 BY MS. JANUS:</p> <p>10 Q. The document -- I don't know that</p> <p>11 there's more. I mean, you're telling me</p> <p>12 there's more to this document.</p> <p>13 I don't know that that's the case.</p> <p>14 A. I don't know either.</p> <p>15 Q. Okay. So you don't know if there</p> <p>16 were more pages than what's here?</p> <p>17 A. That's right. I don't know that.</p> <p>18 It looks like it's incomplete. It</p> <p>19 just feels like there ought to be a second</p> <p>20 page on something like this.</p> <p>21 But, okay, maybe there's nothing</p> <p>22 here.</p> <p>23 Q. Okay. The proposal is that the</p> <p>24 parties renegotiate the license to downgrade</p> <p>25 and limit the use of Blaze Advisor</p> <p style="text-align: right;">Page 320</p>	<p>1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber</p> <p>2 that the license would actually be limited to</p> <p>3 15 named applications, right?</p> <p>4 A. Yeah.</p> <p>5 Q. And those are the current --</p> <p>6 according to the proposal, currently used</p> <p>7 applications, correct?</p> <p>8 A. Right.</p> <p>9 Q. There is no limit on number of</p> <p>10 applications in the Chubb enterprise license,</p> <p>11 is there?</p> <p>12 A. "All usage remains with the</p> <p>13 same" -- there is no limit on --</p> <p>14 The global dispute</p> <p>15 notwithstanding, right.</p> <p>16 So that's right. They could</p> <p>17 have --</p> <p>18 Q. So -- so --</p> <p>19 A. -- they could have 500</p> <p>20 applications in the United States easily.</p> <p>21 Q. Okay.</p> <p>22 A. Yeah, right.</p> <p>23 Q. Okay. So what they're saying is</p> <p>24 we're going -- we understand we could have</p> <p>25 unlimited applications under our ELA, but</p> <p style="text-align: right;">Page 322</p>
<p>1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber</p> <p>2 development and deployment to reflect Chubb's</p> <p>3 actual usage of 15 named applications and 100</p> <p>4 seats of Blaze Advisor development at no</p> <p>5 extra cost to Chubb. "All usage now and</p> <p>6 going forward does not and will not change</p> <p>7 from that permitted under the current license</p> <p>8 agreement and all usage remains with the same</p> <p>9 named applications."</p> <p>10 Do you see that?</p> <p>11 A. Yep.</p> <p>12 Q. Okay. So essentially the proposal</p> <p>13 appears to be -- actually the scope of the</p> <p>14 license will be downgraded, right?</p> <p>15 A. That's what the words on the page</p> <p>16 say. I don't agree with that at all.</p> <p>17 But keep going. Keep going.</p> <p>18 Q. Okay. And the usage will not</p> <p>19 change from that that's permitted under the</p> <p>20 current license, correct?</p> <p>21 A. That's what it says, okay. But</p> <p>22 that's not a downgrade. That's -- so it kind</p> <p>23 of defeats -- self -- it's an internal -- it</p> <p>24 conflicts with itself.</p> <p>25 Q. Well, the proposal contemplates</p> <p style="text-align: right;">Page 321</p>	<p>1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber</p> <p>2 we're going to limit it to the 15</p> <p>3 applications that we are actually using Blaze</p> <p>4 in, right?</p> <p>5 A. Right.</p> <p>6 Q. And we're going to limit ourselves</p> <p>7 to 100 seats of Blaze Advisor development, so</p> <p>8 development seats, correct?</p> <p>9 A. Right.</p> <p>10 Q. And we discussed the fact</p> <p>11 previously that the current ELA does not have</p> <p>12 a limit on development seats, correct?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Yes?</p> <p>15 A. Yes.</p> <p>16 Q. So this would create yet another</p> <p>17 limit in the license that didn't exist when</p> <p>18 Chubb purchased the license?</p> <p>19 A. That's true.</p> <p>20 Q. In addition to that, Chubb has</p> <p>21 said that the use will not change from that</p> <p>22 permitted under the current license agreement</p> <p>23 and all use -- usage remains with the same</p> <p>24 named applications?</p> <p>25 A. That's what it says so far.</p> <p style="text-align: right;">Page 323</p>

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 Q. Okay. What -- so what, I guess,
3 was your response to receiving this proposal?
4 **A. I thought this was a terrible**
5 **proposal.**
6 **I thought it was a bad faith**
7 **proposal to be at this stage making a**
8 **proposal like this.**
9 **It was disgraceful actually.**
10 Q. Why is that?
11 **A. Well, under the proposal Chubb**
12 **shall write to change the applications**
13 **utilized in the Blaze Advisor software any**
14 **time in its sole discretion.**
15 Q. So long as they don't exceed the
16 amount of 15 though?
17 **A. So -- so what that means is they**
18 **could create an application, call it "FICO**
19 **the sucker" which wrappers CSI Express,**
20 **Decision Point, Automated Renewal Process,**
21 **CUW, all the --**
22 THE COURT REPORTER: Excuse me,
23 you've got to slow down. "Wrappers"
24 what?
25 **A. Wrappers the first ten**

Page 324

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 **applications, and it will be treated like one**
3 **named application.**
4 **So to me that was a really**
5 **disingenuous proposal.**
6 **And the fact that we were four**
7 **days away from the breach -- I mean, from the**
8 **termination period was just bad -- felt like**
9 **such bad faith.**
10 **There was no recognition of limits**
11 **on revenue, CPUs.**
12 **There was no constraint here.**
13 **In fact, they went the other way,**
14 **saying, you know what, yeah, as long as we**
15 **call it 15 of anything and we get to make it**
16 **up as Chubb.**
17 Q. So was your main concern about
18 this proposal that Chubb reserved the right
19 to change the applications so long as the
20 applications didn't exceed an amount of 15?
21 **A. That's the most glaring concern,**
22 **yeah. That like jumps off the page. And**
23 **it's -- it's -- it wasn't good.**
24 Q. Okay. So if that provision, which
25 is the second sentence of the paragraph under

Page 325

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 the heading "Utilization of Blaze Advisor
3 Deployment," if that provision had been taken
4 out, would this proposal have been
5 satisfactory to FICO?
6 **A. No. But it would have been a step**
7 **towards it being solvable.**
8 **There are ways this could have**
9 **been solved long before we got to four days**
10 **before the end of the no-cure period.**
11 Q. Okay.
12 **A. But we're not talking about those**
13 **things. Here we are.**
14 **So this is what they gave us.**
15 Q. Okay. So if that part of the
16 provision -- if that part of the proposal had
17 been taken out, then in your view FICO and
18 Chubb could have worked together on a
19 proposal like this to come to a resolution?
20 **A. Possibly, possibly. It required a**
21 **lot more.**
22 **But at that point when they said**
23 **we can do whatever we want with -- as long as**
24 **we call it 15 names, it was not a serious**
25 **proposal.**

Page 326

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 Q. Did you get back to Chubb and say,
3 okay, thank you for your proposal; take out
4 that provision allowing the right to change
5 applications and we'll actually consider it
6 and see if we can come to --
7 **A. No, not that I recall.**
8 **But if they would have done this**
9 **before the breach, then we -- we have a**
10 **different -- we would have loved to have**
11 **worked out a transition deal.**
12 **But the fact that we're -- I**
13 **literally had to declare -- I had to get Tom**
14 **Carretta to tell them we were terminating it.**
15 **I mean, that was -- there was no**
16 **good faith in any of this.**
17 **So I don't know what we did after**
18 **this. I could tell you when I got this, it**
19 **wasn't seen as real.**
20 Q. And so --
21 **A. I didn't see it as real.**
22 Q. And the most significant piece of
23 that would have been this right to change
24 provision that we talked about, and is it the
25 timing of the proposal as well?

Page 327

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 **A. Those would have been two big**
3 **pieces of it.**
4 Q. Okay.
5 **A. It was kind of dead on arrival at**
6 **that point, the way it came across.**
7 Q. So regardless of -- basically what
8 you're saying is Chubb waited too long, and
9 they really could not make a proposal at this
10 point that didn't involve significant
11 payments to FICO --
12 **A. No, not necessarily.**
13 Q. -- for us to consider it?
14 **A. Not necessarily.**
15 MR. HINDERAKER: I'm going to
16 object to the question as misstating
17 your prior to testimony.
18 Q. Okay. So --
19 **A. Yeah, no. I'm not going to**
20 **propose now.**
21 **But they could have -- if we**
22 **were -- said that we need to solve it, we**
23 **need a bridge, we need to do something, we**
24 **would have figured out something.**
25 **We wanted to keep Chubb as a**
Page 328

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 **customer.**
3 **To do what we did too, we were**
4 **really backed in a corner, despite the hoopla**
5 **around, you know, the -- Mike's email, you**
6 [REDACTED]
7 [REDACTED]
8 point in time you were still willing to work
9 with them on a reasonable proposal?
10 **A. Absolutely.**
11 Q. And really the only thing that
12 made the proposal marked as Exhibit 94
13 unreasonable in your mind was this right to
14 change the applications provision?
15 **A. No, I said that was the first**
16 **thing that jumped off and slapped me in the**
17 **face about it.**
18 **There was a lot more to it. There**
19 **was no scope around any of it.**
20 **If we're going to do a**
21 **transitional thing, we're going to bury an**
22 [REDACTED]
23 [REDACTED]
24 **And we knew that they had lost**
25 **track of use. This was the use inventory**
Page 329

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 **they gave us that day.**
3 **But we knew there was other stuff**
4 **out there. We didn't know what it was. But**
5 **we knew there had to be. It's been there for**
6 **a decade.**
7 **There's lot more defining of what**
8 **scope would have been needed to be to --**
9 **And it would have been a**
10 **transition. They would have had to do some**
11 **sort of transitory thing, I think.**
12 **But I don't know, 'cause we never**
13 **got to that point.**
14 **By the time we got your attention**
15 **or the time Chubb decided to pay attention,**
16 **it was -- it was already known about. It was**
17 **escalated.**
18 Q. Well, that's confusing to me.
19 Because you keep saying that
20 despite the timing, which of course FICO knew
21 about the transaction for seven months before
22 bringing it up with Chubb --
23 **A. Chubb knew about it too. Chubb**
24 **knew about it before seven months.**
25 Q. Chubb knew about it.
Page 330

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 But as we've discussed, Chubb had
3 no idea that FICO's plan was to attempt to
4 use the transaction as a mechanism to charge
5 multiples of million of dollars in extra
6 licensing fees.
7 MR. HINDERAKER: Objection to
8 counsel's argument.
9 Go ahead.
10 Counsel is just arguing. And it's
11 just taking up time.
12 Q. All right, let's -- let's stick to
13 the --
14 **A. We didn't have that plan.**
15 Q. Let's stick to the questions and
16 answers then. How about that?
17 MR. HINDERAKER: Fantastic.
18 **A. Fantastic.**
19 Q. Take a look at Exhibit 95
20 previously marked.
21 **A. So on February 26, okay.**
22 Q. So Tamra sent her proposal, which
23 is marked as Exhibit 94, on February 25 at
24 2:06 p.m. Eastern, correct?
25 **A. I'm sorry, which one -- so Tamra**
Page 331

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 **A. It's pretty straightforward.**
3 **So once you reach about three or**
4 **four named applications, the pricing model --**
5 **maybe it's five. I don't remember anymore.**
6 **But once you reach a certain level**
7 **of named applications it exceeds the cost and**
8 **the pricing engine for a next price**
9 **application.**
10 Q. Well, but the enterprise
11 application in option one doesn't have a
12 limitation as to the number of named
13 applications?
14 **A. Yeah, so let me say it again.**
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 340

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 Q. So it would cost them more to
17 limit the license -- under this proposal it
18 would cost them more to buy a more limited
19 license?
20 **A. They would be buying a different**
21 **type of license, but, yes. And the scope is**
22 **more limited.**
23 **But it's not just them. It's a**
24 **cost to anybody. It's not -- it's not a**
25 **Chubb thing.**

Page 341

1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 Q. So was this proposal, option
3 number two, just your way of sort of saying,
4 we didn't like that proposal you made, Tamra,
5 and -- and in fact even though it's a more
6 [REDACTED]
7 [REDACTED] more than we would otherwise for a
8 broader license?
9 **A. No. In fact it would have been**
10 **the other way.**
11 **We were going to say, listen,**
12 **Tamra, you know, it makes a lot more sense to**
13 **buy an enterprise.**
14 **The way our model works -- and**
15 **it's our software, and it's our model -- a**
16 **price model of our software is it's much more**
17 **financially wise to just do the enterprise**
18 **upgrade instead of trying to do named**
19 **applications.**
20 Q. Well, unless you are in a
21 situation where you had an enterprise license
22 and there was a transaction, and now the
23 licensor is taking the position that you have
24 to pay more money.
25 MR. HINDERAKER: Argumentative.

Page 342

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 Counsel's argument.
3 **A. This is before or after breach?**
4 MR. HINDERAKER: It's not a
5 question.
6 THE WITNESS: Oh, I'm sorry, it's
7 not a question?
8 MR. HINDERAKER: It's not a
9 question.
10 BY MS. JANUS:
11 Q. So if Tamra had made that proposal
12 that's marked as 94 prior to the close of the
13 Ace merger, would you have just negotiated
14 about that proposal and taken out the
15 provision relating to a right to change
16 applications?
17 MR. HINDERAKER: Objection, asks
18 for a hypothetical.
19 Go ahead.
20 **A. Oh, I can?**
21 MR. HINDERAKER: Sure.
22 **A. This is what it boils down to.**
23 **I mean, if someone engaged us when**
24 **we tried to engage or before we tried to**
25 **engage, we would have found a way to let them**

Page 343

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 transition in a way that would have had to
3 maintain a really great working relationship.
4 Loved the client, want to maintain
5 a reference.
6 Really wasn't looking to do
7 anything, other than figure out how do we
8 stay whole and continue the relationship.
9 And was there a license
10 opportunity? Yes, there was.
11 But more important to us was that
12 long-term client relationship. T [REDACTED]
13 [REDACTED] would have come and went.
14 But I had Chubb as a customer for
15 a decade. And now a lawsuit? Come on.
16 Q. Did -- when did you leave Chubb?
17 A. FICO?
18 Q. Yeah, sorry. FICO?
19 A. At the end of '16.
20 Right, '17 I was free.
21 Q. And was your separation from FICO
22 your choice?
23 A. Yes.
24 Q. Did anyone at FICO ask you to
25 leave?

Page 344

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 A. No.
3 Q. Did you leave FICO for any reason
4 in connection with the Chubb license issues?
5 A. No. No, I made enough money. It
6 was time for me to move on to the next
7 chapter.
8 In fact this is the most dressed
9 I've been in weeks.
10 Q. I'm showing you what's been
11 previously marked as Exhibit 98.
12 (Document review.)
13 A. 3/11.
14 Q. This is an email from Tom
15 Carretta, and he says -- to Chubb.
16 And he says:
17 "I understand the respective
18 business teams have made some progress.
19 While this process has an elongated longer
20 than expected and has been exasperated by
21 finding two noncompliant applications outside
22 the authorized U.S. territory" --
23 Do you know what he's referring to
24 there?
25 A. No.

Page 345

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 Q. Is he referring to --
3 A. Actually, you know, he's referring
4 to the U.K. applications. But he doesn't
5 name them here, so I'm -- here -- but that's
6 what it is.
7 Q. Had you informed Tom Carretta of
8 those uses prior to him becoming engaged in
9 this dispute?
10 MR. HINDERAKER: I object.
11 Asking -- trying to invade an
12 attorney-client privileged
13 communication.
14 I instruct you not to answer.
15 (Instruction Not to Answer.)
16 Q. Of course those uses weren't new
17 to you, correct?
18 A. Of course -- I don't know. I just
19 don't know. I just don't know. I mean,
20 right --
21 Q. You knew about use of Blaze in at
22 least the U.K. prior to --
23 A. I knew of one, yeah.
24 Q. Well, and we've seen emails where
25 there was another one discussed that you were

Page 346

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 on.
3 A. Is that right? Are you sure?
4 Q. Yeah.
5 A. Okay. I'd have to see that.
6 Q. The record is what it is.
7 A. Yeah, yeah. I'd have to see it.
8 I don't remember it that way, but
9 okay.
10 Q. But you knew about uses in the
11 U.K. prior to Tom Carretta starting to write
12 letters on this dispute, correct?
13 A. Whether that's true or not
14 doesn't -- they're still unauthorized,
15 noncompliant.
16 Noncompliance versus Russ said,
17 oh, yeah, that's global, that's different
18 than being compliant, right?
19 Q. And do you think that they were
20 unauthorized uses even if FICO said to Chubb,
21 you're up, yes, you can use Blaze in Europe
22 under the Chubb ELA?
23 MR. HINDERAKER: Objection.
24 A. Yeah.
25 Sorry.

Page 347